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Personal Jurisdiction in Legal Malpractice Litigation

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ARTICLE

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Abstract. Lawyers are increasingly engaging in multi-jurisdictional practice—and their representation is increasingly giving rise to cross-jurisdictional malpractice actions. Over the years, courts have issued divergent and contradictory opinions about whether out-of-state attorneys representing clients only on out-of-state matters can constitutionally be subject to personal jurisdiction in the client's home state. The Supreme Court's recent opinions in *Daimler v. Bauman* and *Walden v. Fiore* do little to settle this question and, in fact, may raise more questions than they answer. Nevertheless, the Supreme Court's new personal jurisdiction jurisprudence offers an opportunity for courts to adopt a more cohesive analysis of personal jurisdiction in legal malpractice cases.

In particular, the Supreme Court has left room for courts to consider the state's interest in regulating legal practice and protecting state citizens as part of their personal jurisdiction analysis. To ensure that such interests are not neglected, courts should focus on two aspects of the specific jurisdiction analysis. First, they should permit a broader view of "connectedness" in specific jurisdiction cases, upholding jurisdiction when the defendant's forum conduct is similar to the conduct at issue in the suit—even if defendant's in-forum contacts did not directly cause the plaintiff's harm. Second, courts should consider the foreseeable in-state effects of the attorney's out-of-state conduct. If competent representation would give rise to foreseeable in-state issues and consequences, the attorney has engaged in purposeful availment of forum benefits by accepting the engagement. Both of these recommendations are consistent with existing Supreme Court precedent, and both would

promote a more consistent approach to personal jurisdiction while protecting client interests.

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I. INTRODUCTION

Legal representation increasingly crosses state—and even national—boundaries.[1] A revolution in communication technology has made it easier for lawyers to represent geographically distant clients.[2] Solo practitioners may work primarily, or even exclusively, online, communicating with clients through video conferences and email.[3] Large law firms, on the other hand, may aspire to international status—their offices span the globe, and their attorneys travel wherever needed to represent clients across the United States and throughout the world.

An increasingly global legal practice means that client disputes, when they arise, are also more likely to cross geographical and jurisdictional lines. Understandably, clients will find it easier to file legal malpractice actions in their home forum than to travel to the attorney's location to bring a lawsuit. But will courts in the client's home forum have personal jurisdiction over non-resident attorneys? Certainly, in some cases the answer will be easy—if, for example, an attorney lives near the border of two states, is licensed in both, regularly practices in the courts of both states, and represented the client within the courts of the client's home state, then there is no question that the attorney would be subject to jurisdiction in that state.[4] Eliminate any of these facts, however, and the question becomes more difficult: What if the lawyer is licensed in the client's home state but did no work there for the client?[5] What if the lawyer represented the client only on an out-of-state matter—but could reasonably foresee that the client would feel the effects of that representation in its home state?[6] What if the lawyer represented a client only on an out-of-state matter but advertised within the client's home state?[7] For decades, courts have struggled to apply consistent principles in

1. *See* Cassandra Burke Robertson, *Regulating Electronic Legal Support Across State and National Boundaries*, 47 AKRON L. REV. 37, 39 (2014) ("[T]he globalization of business practices means that legal services can cross borders much more easily.").

2. *See id.* ("[A] growing number of lawyers are providing legal services online th[r]ough virtual law practices.").

3. *See* John Wallbillich, *Legal Tech: The Rise of the Virtual Lawyers*, WIREDGC (Feb. 25, 2011), http://www.wiredgc.com/2011/02/25/legal-tech-the-rise-of-the-virtual-lawyers ("[V]irtual law firm means two things . . . the judicious use of technology to work and communicate with clients and co-workers.").

4. *See infra* Part III.

5. *See infra* Part III.A.

6. *See infra* Part IV.B.

7. *See infra* Part III.B.

determining whether non-resident attorneys could be subject to personal jurisdiction in such instances.[8]

In 2014, the Supreme Court decided two major personal jurisdiction cases: *Daimler AG v. Bauman*[9] and *Walden v. Fiore*.[10] Both of these cases proved to be immediately influential in substantially shifting the equilibrium for personal jurisdiction.[11] *Daimler* significantly narrowed the application of general (dispute-blind) jurisdiction, holding that a party's "systematic and continuous" contacts alone are not enough to support jurisdiction unrelated to the forum.[12] Instead, it applied an "at-home" test to support general jurisdiction only where a corporate defendant was incorporated or had its principal place of business.[13] *Walden* limited the scope of "effects-based" jurisdiction, holding that a defendant's mere knowledge that a plaintiff will suffer negative effects in a given forum is likewise insufficient to support jurisdiction.[14] *Walden* required a showing that the defendant's intentional contacts connected it with the forum state, "not just to a plaintiff who lived there."[15]

This Article analyzes the various factors affecting the jurisdictional question in litigation against non-resident attorneys. First, it explains the doctrine, history, and intent of the constitutional personal jurisdiction doctrine and explores how that doctrine was changed by the *Daimler* and *Walden* decisions.[16] Second, this Article examines the various positions taken by courts prior to the Supreme Court's decisions in *Daimler* and *Walden* and offers predictions about how the recent decisions are likely to

8. *See generally* 4 RONALD E. MALLEN WITH ALLISON MARTIN RHODES, LEGAL MALPRACTICE § 37:20 (2015 ed.) ("If a legal malpractice action is filed in the state other than where the attorney resides, the initial question is whether there is a basis for personal jurisdiction."); Marjorie A. Shields, Annotation, *In Personam Jurisdiction, Under Long-Arm Statute, over Nonresident Attorney in Legal Malpractice Action*, 78 A.L.R. 6th 151 (2015) (collecting and categorizing cases).

9. Daimler AG v. Bauman, 134 S. Ct. 746 (2014).

10. Walden v. Fiore, 134 S. Ct. 1115 (2014).

11. *See* Charles W. "Rocky" Rhodes & Cassandra Burke Robertson, *Toward a New Equilibrium in Personal Jurisdiction*, 48 U.C. DAVIS L. REV. 207, 263–64 (2014) (discussing the impact of *Daimler* and *Walden* on current and future personal jurisdictional doctrine).

12. *Daimler*, 134 S. Ct. at 761–62.

13. *Id.*

14. *See Walden*, 134 S. Ct. at 1126 (explaining jurisdictional principles and stating "the mere fact that his conduct affected plaintiffs with connection to the forum State does not suffice to authorize jurisdiction").

15. *See id.* (discussing precedent and holding jurisdiction cannot be asserted in the forum state based solely on actions that are connected to a plaintiff who lives there); *id.* at 1123 ("To be sure, a defendant's contacts with the forum State may be intertwined with his transactions or interactions with the plaintiff or other parties. But a defendant's relationship with a plaintiff or third party, standing alone, is an insufficient basis for jurisdiction.").

16. *See infra* Part II.

affect jurisdictional determinations in legal malpractice cases.[17] Finally, it proposes a balanced framework for jurisdictional analysis that builds on the Supreme Court's recent decisions but also incorporates state regulatory interests in client protection.[18] This framework will ensure the liberty interests protected by the constitutional due process doctrine will remain intact, but it will also ensure that courts may exercise jurisdiction over non-resident attorneys when the attorneys' conduct falls within the state's legislative and regulatory power.

II. THE SHIFTING EQUILIBRIUM IN PERSONAL JURISDICTION

Within the last four years, the Supreme Court has significantly changed the personal jurisdiction analysis.[19] After going for many years without deciding a single personal jurisdiction case, it suddenly decided four cases—and, in each of them, held the exercise of personal jurisdiction would infringe on the defendant's constitutional right to due process.[20] This retrenchment of judicial power has a significant impact on the scope of litigation and will continue to have far-reaching effects.

A. *The History and Purpose of Constitutional Personal Jurisdiction*

Personal jurisdiction refers to a court's authority to exercise jurisdiction over the parties to the case. Historically, courts exercised power over individuals within their territorial jurisdiction.[21] As transportation and commerce developed, however, disputes increasingly began to cross state lines. States developed so-called "long-arm" statutes that enumerated situations in which local courts could assert jurisdiction over both business

17. *See infra* Part III.

18. *See infra* Part IV.

19. *See* Bernadette Bollas Genetin, *The Supreme Court's New Approach to Personal Jurisdiction*, 68 SMU L. REV. 107, 107–08 (2015) (discussing the impact of precedent on the Supreme Court's decision).

20. *See* Daimler AG v. Bauman, 134 S. Ct. 746, 762 (2014) ("It was therefore error for the Ninth Circuit to conclude that Daimler . . . was at home in California, and hence subject to suit there on claims by foreign plaintiffs having nothing to do with anything that occurred or had its principal impact in California."); *Walden*, 134 S. Ct. at 1124–26 ("[W]e conclude that petitioner lacks the 'minimal contacts' with Nevada that are prerequisite to the exercise of jurisdiction over him."); Goodyear Dunlop Tires Operations, SA v. Brown, 131 S. Ct. 2846, 2851 (2011) (finding a lack of "continuous and systematic" contacts sufficient for the North Carolina court to assert jurisdiction over the foreign corporation); J. McIntyre Mach., Ltd. v. Nicastro, 131 S. Ct. 2780, 2791 (2011) (reversing the New Jersey Supreme Court's decision and holding New Jersey's "exercise of jurisdiction would violate due process").

21. *See* Charles W. "Rocky" Rhodes, *Liberty, Substantive Due Process, and Personal Jurisdiction*, 82 TUL. L. REV. 567, 572 (2007) ("Under the common law, only those physically present within the state could be served.").

entities and individuals who were not domiciled within the state.[22] As these statutes grew in number and reach, courts were asked to define the outer limits of the state's power to authorize such jurisdiction. In 1878, the Supreme Court decided *Pennoyer v. Neff*,[23] holding that the Due Process Clause of the Fourteenth Amendment limited the power of states to exercise jurisdiction over out-of-state defendants.[24]

Over the next century and a half, the Court has repeatedly reaffirmed the existence of constitutional limits on personal jurisdiction. Over that time, however, the Court's focus has shifted: in 1878, the Court in *Pennoyer* was focused on territorial sovereignty.[25] By the middle of the century, in *International Shoe Co. v. Washington*,[26] the Court's focus had shifted from sovereignty to fairness, emphasizing that jurisdictional determinations should incorporate notions of "fair play and substantial justice."[27] Later cases seemed to vacillate between bright-line rules of territorial power[28] and more flexible standards that deferred to individualized decisions of reasonableness.[29] Scholars have noted disagreements about whether the "core value" of the personal jurisdiction doctrine is the protection of the defendant's liberty interests, procedural fairness and the avoidance of undue burdens on unwilling litigants, or the limits of sovereign power;[30] at

22. *Id.* at 572–73 (discussing how states began to enact long-arm statutes, which allow courts to assert jurisdiction over nonresidents).

23. Pennoyer v. Neff, 95 U.S. 714 (1878).

24. *Id.* at 733.

25. *Id.*

26. Int'l Shoe Co. v. Wash., 326 U.S. 310 (1945).

27. The Court in *International Shoe Co.* noted:

> Historically the jurisdiction of courts to render judgment in personam is grounded on their de facto power over the defendant's person. Hence his presence within the territorial jurisdiction of a court was prerequisite to its rendition of a judgment personally binding him. But now . . . due process requires only that . . . he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.

Id. at 316.

28. *E.g.*, Burnham v. Superior Court of Cal., 495 U.S. 604, 621–22 (1990) (upholding transient jurisdiction due to its long pedigree).

29. *E.g.*, Burger King v. Rudzewicz, 471 U.S. 462, 478 (1985) ("[J]urisdictional rules may not be employed in such a way as to make litigation 'so gravely difficult and inconvenient' that a party unfairly is at a 'severe disadvantage' in comparison to his opponent." (quoting The Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 18 (1972))).

30. *See* Austen L. Parrish, *Sovereignty, Not Due Process: Personal Jurisdiction over Nonresident Alien Defendants*, 41 WAKE FOREST L. REV. 1, 54 (2006) (arguing that, at least in transnational cases involving foreign defendants, sovereignty is the only basis for constitutional restrictions on personal jurisdiction); Rhodes, *supra* note 21, at 569 ("Some commentators urge that jurisdiction's core value is procedural fairness, while others claim that sovereignty is the guiding principle."); Alan M. Trammell,

different times, the Supreme Court has expressed support for all three views.[31]

B. *The Doctrinal Bases of the Jurisdictional Analysis*

The varying—and sometimes competing—interests that courts sought to protect through personal jurisdiction have led to the development of a relatively complicated doctrine. Under the Supreme Court's current doctrinal formulation, there are two types of personal jurisdiction: general and specific. General jurisdiction is dispute-blind, allowing a defendant to be sued on any matter, whether or not it related to activity within the forum. Courts' application of general jurisdiction has undergone a radical transformation over the last two years. For decades, the common interpretation of Supreme Court precedent provided that general jurisdiction would be appropriate when the defendant had "continuous and systematic" contacts within the forum.[32] Just how substantial those contacts had to be was hotly debated—some courts interpreted relatively sparse contacts over a longer time period to count as sufficiently continuous and systematic, while others did not.[33]

All of this changed in 2014 when the Supreme Court decided *Daimler AG v. Bauman*, which abandoned the "continuous and systematic" test in

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Jurisdictional Sequencing, 47 GA. L. REV. 1099, 1123 (2013) ("[P]ersonal jurisdiction derives from the Due Process Clauses of the Fifth and Fourteenth Amendments and protects a person's liberty interests.").

31. *See* Daimler AG v. Bauman, 134 S. Ct. 746, 754–55 (2014) (noting "*International Shoe*'s conception of 'fair play and substantial justice'" constituted a "momentous departure from *Pennoyer*'s rigidly territorial focus"); Walden v. Fiore, 134 S. Ct. 1115, 1122 (2014) ("Due process limits on the State's adjudicative authority principally protect the liberty of the nonresident defendant—not the convenience of plaintiffs or third parties." (citing World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291–92 (1980))); Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 702 (1982) ("The personal jurisdiction requirement recognizes and protects an individual liberty interest. It represents a restriction on judicial power not as a matter of sovereignty, but as a matter of individual liberty."). Additionally, the Court in *World-Wide Volkswagen* noted:

> [T]he Framers also intended that the States retain . . . in particular, the sovereign power to try causes in their courts. The sovereignty of each State, in turn, implied a limitation on the sovereignty of all of its sister States—a limitation express or implicit in both the original scheme of the Constitution and the Fourteenth Amendment.

World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 293 (1980).

32. *See* Judy M. Cornett & Michael H. Hoffheimer, *Good-Bye Significant Contacts: General Personal Jurisdiction After* Daimler AG v. Bauman, 76 OHIO ST. L.J. 101, 104–05 (2015) ("The law was so well settled that large corporations in leading cases did not even challenge general jurisdiction over them." (citing Bauman v. DaimlerChrysler Corp., 644 F.3d 909, 914 (9th Cir. 2011))).

33. *See* Charles W. "Rocky" Rhodes, *Clarifying General Jurisdiction*, 34 SETON HALL L. REV. 807, 811 (2004) (offering an empirical review of approximately 3,000 cases and finding significant variation among the standards employed by various courts).

favor of one that allowed for dispute-blind jurisdiction only where the defendant is "at home."[34] The Court further held that at-home status will normally correlate with domicile and citizenship: for individuals, generally their state of residence, and for corporations, both their state of incorporation and the state, if different, in which they maintain their principal place of business.[35] In theory, the general jurisdiction analysis should now be simpler, as it relies on a more bright-line rule. In practice, however, any simplification in general jurisdiction is likely to be offset by a growth in disputes over specific jurisdiction.[36]

In contrast to general jurisdiction, specific jurisdiction is not dispute-blind—instead, it requires that the dispute bears a relationship to the judicial forum and gives rise to a determination of judicial power that applies only to the case at bar. The Supreme Court has held that specific jurisdiction requires a multipart analysis. First, the defendants must have purposeful "minimum contacts" with the forum state. The Court has characterized this requirement as one of "purposeful availment"—that is, the defendant's contacts cannot merely be fortuitous, accidental, or solely the result of the plaintiff's actions but must demonstrate that in some way the defendant sought to benefit from interactions with forum state.[37] Second, there must be some relationship between the defendant's purposeful contacts with the state and the dispute itself.[38] Finally, the

34. *Daimler*, 134 S. Ct. at 762.

35. *See* Rhodes & Robertson, *supra* note 11, at 218 (explaining the Supreme Court in *Daimler* "gave a decisive answer: except in very rare circumstances, a corporation is 'at home' only where it is domiciled—its state of incorporation and the state where it maintains its principal place of business").

36. *See id.* at 211 (predicting an increase in specific-jurisdiction disputes).

37. *See* Henry S. Noyes, *The Persistent Problem of Purposeful Availment*, 45 CONN. L. REV. 41, 51–52 (2012) (examining the history and development of the "purposeful availment" requirement). The Court in *Burger King* defined the scope of "purposeful availment":

> This "purposeful availment" requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of "random," "fortuitous," or "attenuated" contacts . . . or of the "unilateral activity of another party or a third person" . . . . Jurisdiction is proper, however, where the contacts proximately result from actions by the defendant *himself* that create a "substantial connection" with the forum State.

Burger King v. Rudzewicz, 471 U.S. 462, 478 (1985) (citations omitted).

38. *See Daimler*, 134 S. Ct. at 754 (defining specific jurisdiction as litigation that "aris[es] out of or relate[s] to the defendant's contacts with the forum" (alteration in original) (quoting Helicopteros Nacionales de Colom., SA v. Hall, 466 U.S. 408, 414 n.8 (1984))); *Burger King*, 471 U.S. at 472 (supporting jurisdiction when "litigation results from alleged injuries that 'arise out of or relate to' [defendants'] activities" in the forum (quoting Helicopteros de Nacionales de Colom., SA v. Hall, 466 U.S. 408, 414 (1984))); Int'l Shoe Co. v. Wash., 326 U.S. 310, 319 (1945) (applying to obligations that "arise out of or are connected with the activities within the state"); *see also* Rhodes & Robertson, *supra* note 11, at 230–31 (explaining the connectedness requirement of personal jurisdiction).

Court must be satisfied that the exercise of jurisdiction is reasonable under the circumstances—and for that determination, it must weigh five factors, sometimes called the "fairness" or "reasonableness" factors, which include: (1) "the forum state's interest in adjudicating the dispute"; (2) "the plaintiff's interest in obtaining convenient and effective relief"; (3) "the interstate judicial system's interest in obtaining the most efficient resolution of controversies"; and (4) "the shared interest of the several states in furthering fundamental substantive social policies."[39]

Because specific jurisdiction relies on a more flexible standard, there is significant room for the parties to contest jurisdiction. Parties may dispute whether the defendant's contacts with the forum were truly purposeful, the extent of the connection between the dispute and the defendant's contacts with the forum, and finally, whether it would be reasonable for the trial court to exercise jurisdiction over the defendant, given the relative benefits and burdens.

Shortly after limiting the reach of general jurisdiction in *Daimler*, the Supreme Court decided a second 2014 case, *Walden v. Fiore*, this time addressing a variant of specific jurisdiction.[40] *Walden* evaluated the first part of the specific jurisdiction analysis—that is, what kind of contacts can establish purposeful availment of forum benefits.[41] The Supreme Court, which has long held that contacts must be measured by the defendant's actions, not those of a plaintiff or other third party, stated three decades ago that "[t]his 'purposeful availment' requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts, or of the 'unilateral activity of another party or a third person.'"[42] That is, a plaintiff's unilateral forum contacts cannot give rise to jurisdiction—the defendant itself must take some affirmative action to "create a 'substantial connection' with the forum state."[43]

Thus, for example, the Court held in *Hanson v. Denckla*[44] that a trust company whose long-term client moved out of state could not be sued in the plaintiff's new state—although the company had engaged in

39. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292 (1980).

40. Walden v. Fiore, 134 S. Ct. 1115, 1126 (2014).

41. *See id.* at 1121 ("This case addresses the 'minimum contacts' necessary to create specific jurisdiction.").

42. *Burger King*, 471 U.S. at 475 (citations omitted) (first quoting Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 774 (1984); and then quoting Helicopteros de Nacionales de Colom., SA v. Hall, 466 U.S. 408, 417 (1984).

43. *Id.* at 475.

44. Hanson v. Denckla, 357 U.S. 235 (1958).

communications with the client in her new state, this was a result of her unilateral move; the trust company had done nothing to "purposefully avail[] itself of the privilege of conducting activities within the forum State."[45] The Court contrasted its decision with *McGee v. International Life Insurance Co.*,[46] which had similarly attenuated facts but one key difference: in *McGee*, the insurance company defendant had solicited the plaintiff's continuing business by mailing a policy-renewal offer to his home.[47] It was a small difference, but an important one. The Court emphasized the "territorial limitations" of the states forbade them from exercising jurisdiction without such purposeful contact.[48]

Walden addressed the question of whether out-of-state conduct with an in-state effect could count as the requisite purposeful availment.[49] Decades earlier, in *Calder v. Jones*,[50] the Court had appeared to establish a broad authorization for such jurisdiction; it allowed a defamation plaintiff to sue in her home state of California for statements made by a writer and editor in Florida, holding the writer and editor "directed" their tortious conduct at the state by discussing the plaintiff's California activities and by causing reputational harm in that state.[51] In the years following the Supreme Court's decision in *Calder*, lower courts disagreed about how the case should be interpreted.[52] A number of courts applied *Calder*'s holding broadly, stating that "intentional conduct knowingly targeting a forum resident" would count as conduct that "targeted" the plaintiff's home forum.[53] Other courts applied a more restrictive test, deciding that the defendant's conduct must have a stronger connection with the forum itself.[54]

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45. *Id.* at 253.

46. McGee v. Int'l Life Ins. Co., 355 U.S. 220 (1957).

47. *Id.* at 221–22.

48. *Hanson*, 357 U.S. at 250–51.

49. Walden v. Fiore, 134 S. Ct. 1115, 1119 (2014) (recognizing the issue of the defendant's out-of-state conduct on an in-state plaintiff).

50. Calder v. Jones, 465 U.S. 783 (1984).

51. *Id.* at 788–89.

52. *See* Alan M. Trammell & Derek E. Bambauer, *Personal Jurisdiction and the "Interwebs,"* 100 CORNELL L. REV. 1129, 1144 (2015) (explaining that "nearly identical facts led to contrary conclusions in different courts").

53. Lee Goldman, *From* Calder *to* Walden *and Beyond: The Proper Application of the "Effects Test" in Personal Jurisdiction Cases*, 52 SAN DIEGO L. REV. 357, 359 (2015) (first citing Wash. Shoe Co. v. A-Z Sporting Goods Inc., 704 F.3d 668, 675 (9th Cir. 2012); then citing Licciardello v. Lovelady, 544 F.3d 1280, 1288 (11th Cir. 2008); and then citing N. Laminate Sales, Inc. v. Davis, 403 F.3d 14, 26 (1st Cir. 2005)).

54. *Id.* (first citing Wolstenholme v. Bartels, 511 Fed. App'x 215, 219 (3d Cir. 2013); then citing Grynberg v. Ivanhoe Energy Inc., 490 Fed. App'x 86, 97 (10th Cir. 2012); then citing Mobile

In *Walden*, the Supreme Court adopted a restrictive view of the "effects test," concluding the "targeting" requirement was not satisfied by the allegedly wrongful seizure of funds from a forum resident.[55] The case arose when a Georgia-based law enforcement officer seized gambling winnings from a Nevada resident traveling through Atlanta.[56] The plaintiff sought to file suit in her home state of Nevada, but the Court concluded that jurisdiction was lacking.[57] It emphasized that the correct jurisdictional standard is "whether the *defendant's* actions connect him to the *forum*," underscoring both "defendant" and "forum" to distinguish situations in which it is the plaintiff's actions that connect the suit to the forum and situations in which the defendant's actions create only a connection to the plaintiff, not an action to the forum itself.[58] In *Walden*, the Court concluded the defendant's actions were insufficient to establish jurisdiction.[59] Because the effects of the financial deprivation would be felt wherever the plaintiff chose to reside, nothing in the defendant's seizure of funds created the requisite connection to the forum.[60] By treating in-forum effects as just another type of contact the defendant might have with the relevant forum, the Court made clear that effects-based jurisdiction is not an alternative basis for jurisdiction; instead, it falls squarely within ordinary specific jurisdiction, and must therefore be subject to the same minimum-contacts analysis.[61]

Although the Supreme Court suggested in *Walden* that it was merely distinguishing its earlier decision in *Calder*, *Walden* can be better interpreted as a "stealth overruling" of the Court's earlier opinion.[62] In *Calder*, the writer and the editor who were sued for defamation had not had direct

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Anesthesiologists Chi., LLC v. Anesthesia Assocs. of Hous. Metroplex, PA, 623 F.3d 440, 445–46 (7th Cir. 2010); then citing Clemens v. McNamee, 615 F.3d 374, 379 (5th Cir. 2010); then citing Johnson v. Arden, 614 F.3d 785, 796 (8th Cir. 2010); and then citing Young v. New Haven Advocate, 315 F.3d 256, 262–63 (4th Cir. 2002)).

55. Walden v. Fiore, 134 S. Ct. 1115, 1125 (2014).

56. *Id.* at 1119.

57. *Id.*

58. *Id.* at 1124.

59. *Id.*

60. *Id.* at 1125.

61. *Id.* at 1126.

62. This argument has been put forth previously:

> The facts that the Court excludes from its discussion of *Calder*, however, suggest that the Court is going much further, such that *Walden* is a "stealth overruling" of *Calder*—if a new case were to arise today with the exact same fact pattern as *Calder*, it is unlikely that the Court would sustain jurisdiction.

Rhodes & Robertson, *supra* note 11, at 253.

contact with the plaintiff's home forum. Instead, they communicated the allegedly defamatory statements to their employer (the *National Enquirer*) in Florida, and their employer subsequently published the statements throughout the nation.[63] The Supreme Court was careful to explain that it was not imputing the publication's forum contacts to the writer and the editor; thus, "the Enquirer's California sales were not counted as minimum contacts in the case against the individual defendants."[64] Instead, the Court relied on the "foreseeable effects of that communication on the plaintiff's reputation in California, rather than the publication in California," to establish effects-based jurisdiction.[65] In contrast, the Court in *Walden* held that even though the plaintiff would foreseeably suffer effects in her home forum, those effects were insufficient to establish jurisdiction.

It may be possible to distinguish the two cases by concluding that libel, as a reputational tort, may target the plaintiff's home forum (and reputational center) in a way that funds deprivation does not.[66] If this is the basis for a distinction, however, neither case will be particularly useful outside its own factual context. Courts will continue to struggle with effects test cases that arise in other contexts, such as intellectual property infringement, financial fraud, business torts, and—importantly for this Article—legal malpractice.[67] Thus, while the stronger view is that *Calder* and *Walden* are "rather squarely at odds,"[68] the tension between the two cases is less important than the uncertainty raised by the Court's opinion in *Walden*: If causing foreseeable harm to an in-state resident is insufficient to show that the defendant "targeted" a forum, then what is left of the effects test outside of the libel context? After all, even the most minor direct contact with a forum (such as the solicitation in *McGee*) may support traditional minimum-contacts jurisdiction; effects test jurisdiction was only ever relevant in cases where the defendant lacked even the most minor direct contact with the forum.

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63. *Id.*

64. *Id.* (quoting Cassandra Burke Robertson, *The Inextricable Merits Problem in Personal Jurisdiction*, 45 U.C. DAVIS L. REV. 1301, 1313 (2012)).

65. *Id.*

66. *Walden*, 134 S. Ct. at 1123–24 ("The crux of *Calder* was that the reputation-based 'effects' of the alleged libel connected the defendants to California, not just to the plaintiff.").

67. *See* Allan Erbsen, *Personal Jurisdiction Based on the Local Effects of Intentional Misconduct*, 57 WM. & MARY L. REV. 385, 416 (2015) ("That confusion is a problem because terrorism, computer hacking, and myriad other forms of intentional torts lack the idiosyncratic nuances of libel law.").

68. Rhodes & Robertson, *supra* note 11, at 253.

III. PERSONAL JURISDICTION OVER NON-RESIDENT ATTORNEYS

The doctrinal shift in personal jurisdiction creates new challenges in legal malpractice litigation. Certainly, some cases will not change. Both before and after *Daimler* and *Walden*, attorneys and law firms could always be sued in their home states, regardless of where the representation occurred or the matters it covered.[69] But for non-resident attorneys, the situation has always been complicated—and has become even more so now.

A. *General Jurisdiction*

General jurisdiction over attorneys and law firms will become more difficult to obtain. The prior pervasiveness of the "continuous and systematic" standard meant that out-of-state law firms that regularly represented in-state clients—and certainly those that maintained an in-state office—did not even challenge jurisdiction when they were sued in the client's home forum.[70] Attorneys and firms with lesser contacts, who represented in-state clients only occasionally, would sometimes have to litigate the question of whether those actions were enough to meet the continuous and systematic test, though courts were generally reluctant to subject defendant attorneys to dispute-blind jurisdiction for such sporadic representation.[71]

Now that the continuous and systematic standard is dead, cases that previously seemed certain will be litigated; even businesses with an in-state

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69. *See* Daimler AG v. Bauman, 134 S. Ct. 746 (2014) (summarizing general jurisdiction for individuals and corporations in their home forum); *Walden*, 134 S. Ct. at 1122–23 (2014) (clarifying it is the defendant's affiliation with the state that creates personal jurisdiction); 4 MALLEN WITH RHODES, *supra* note 8, § 37:20 (emphasizing jurisdiction can be found in the state the lawyer resides, even if the claim arises elsewhere).

70. *See, e.g.*, Jackson v. Kincaid, 122 S.W.3d 440, 450 (Tex. App.—Corpus Christi 2003, pet. granted, judgm't vacated w.r.m.) ("We note that the trial court retains personal jurisdiction over Crowe & Dunlevy, which apparently conceded that its substantial legal representation of Texas clients subjects it to general personal jurisdiction here."); *see also* 4 MALLEN WITH RHODES, *supra* note 8, § 37:24 (stating a "basis for general jurisdiction exists, if the lawyer or law firm maintains a place of business or has regular contacts within the forum jurisdiction").

71. *See, e.g.*, Cerberus Partners, LP v. Gadsby & Hannah, LLP, 836 A.2d 1113, 1119 (R.I. 2003) (holding that the law firm's contacts were not significant enough to give rise to general jurisdiction; ten attorneys had been admitted to Rhode Island pro hac vice in six different cases between 1994 and 2003). For further discussion, see generally *Kowalski v. Doherty, Wallace, Pillsbury & Murphy*, 787 F.2d 7 (1st Cir. 1986), *King v. Ridenour*, 749 F. Supp. 2d 648 (E.D. Mich. 2010), *Klayman v. Barmak*, 634 F. Supp. 2d 56 (D.D.C. 2009), *Cape v. von Maur*, 932 F. Supp. 124 (D. Md. 1996), *Ex parte Dill, Dill, Carr, Stonbraker & Hutchings, PC*, 866 So. 2d 519 (Ala. 2003), and 4 MALLEN WITH RHODES, *supra* note 8, § 37:24.

regional office can contest general jurisdiction.[72] There is no longer any need for courts to determine how many clients a lawyer or firm must represent before becoming subject to general jurisdiction—even continuous and systematic client representation will not give rise to general jurisdiction. Instead, the attorney or law firm must meet the "at-home" test. In most cases, this is a bright-line test: the Supreme Court concluded that it should correlate with domicile and citizenship in all but the most "exceptional" circumstances.[73] In *Daimler*, this standard meant that even a regional office located within the state was insufficient to render the corporate defendant at home; only the state of incorporation or principal place of business would qualify as the home forum.[74] This standard will similarly apply to multi-office law firms that, in the past, would have been subject to general jurisdiction in any state where the firm maintained an office. Now, however, general jurisdiction over a firm will likely be limited to its state of incorporation (or registration, if the firm is founded as a non-corporate entity[75]) and the state, if different, where the "nerve center" of the firm is located.[76]

But even as courts are freed from the burden of determining the necessary quantum of contacts to support general jurisdiction, other questions will arise. One such question, which was not answered by *Daimler*, is whether an attorney is at home in a state where he or she maintains an active law license. Under the prior continuous and systematic test, courts often held that merely holding a state license was not the type of regular contact needed to support general jurisdiction.[77] Under the

72. The *Daimler* defendant, after all, had a regional office located in California. *Daimler*, 134 S. Ct. at 752.

73. *Id.* at 746, 761 n.20 (2014) ("We do not foreclose the possibility that in an exceptional case a corporation's operations in a forum other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation at home in that [s]tate." (citing Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952) (second citation omitted))).

74. *Id.* at 752 ("MBUSA has multiple California-based facilities, including a regional office in Costa Mesa, a Vehicle Preparation Center in Carson, and a Classic Center in Irvine.").

75. Although the Court in *Daimler* spoke of "incorporation," the defendant in the case, Mercedes-Benz USA, LLC, was actually a limited liability company. *Id.* at 761–62; *see also* 5 JOHN P. LENICH, NEBRASKA PRACTICE SERIES: NEBRASKA CIVIL PROCEDURE § 3:8 (Thomson West 2015) ("The next question is whether corporations and unincorporated entities are subject to general personal jurisdiction in the same places. The Court's decision in *Daimler* suggests that the answer is 'yes.'").

76. *See* Hertz Corp. v. Friend, 559 U.S. 77, 91–92 (2010) (defining "principal place of business").

77. *See* Worthington v. Small, 46 F. Supp. 2d 1126, 1134 (D. Kan. 1999) ("In short, other than maintaining his Kansas law license, defendant has had very few contacts with Kansas in recent years.

new at-home test, however, should the acquisition of a license to practice law render the attorney at home in the forum? A state license, after all, permits the attorney to practice without restriction in the courts of the state, and licensure provides a basis to support that state's judicial authority to regulate the attorney's practice.[78] Few attorneys will maintain active licenses in more than two states.[79] In cases relating to the attorney's provision of legal services, it is possible that the state of licensure may be a close analogue to the state of incorporation or principal place of business that forms the basis of at-home jurisdiction for corporations and similar business entities.[80]

B. *Specific Jurisdiction*

Although there are still some remaining uncertainties about the scope of general jurisdiction, there are many more open questions about the scope of specific jurisdiction. Even before the Supreme Court's recent personal jurisdiction decisions, the flexibility of the specific jurisdiction standard

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These limited contacts are not sufficiently 'continuous and systematic' to enable this court to exercise general jurisdiction over defendant."); Santos v. Sacks, 697 F. Supp. 275, 281 (E.D. La. 1988) ("It is this Court's opinion that membership in the Florida Bar does not, of itself, establish the minimum contacts required by due process to confer personal jurisdiction over a nonresident defendant."); Crea v. Busby, 55 Cal. Rptr. 2d 513, 515 (Ct. App. 1996) ("The only contact respondent has had with California is the maintenance of his California law license. He has not practiced law in California in 14 years. He does not maintain an office, solicit clients, advertise, own property, or have obligations in California."). *But see* Nikolai v. Strate, 922 S.W.2d 229, 239 (Tex. App.—Fort Worth 1996, writ denied) ("[W]e conclude that requiring Tondre, a licensed Texas attorney actively practicing in Texas courts, to submit to the jurisdiction of Texas courts does not offend traditional notions of fair play and substantial justice.").

78. Beth M. Coleman, Note, *The Constitutionality of Compulsory Attorney Service: The Void Left by* Mallard, 68 N.C. L. REV. 575, 586 n.113 (1990) ("[A]ttorneys receive reciprocal benefits as a result of state licensure."). "State licensure in essence grants attorneys a monopoly in the practice of law." *Id.*

79. *See* Jenny Montgomery & Rebecca Berfanger, *Attorneys Discuss Pros and Cons of Practicing in 2 States*, THE IND. LAW. (Apr. 13, 2011), http://www.theindianalawyer.com/attorneys-discuss-pros-and-cons-of-practicing-in-2-states/PARAMS/article/26113 (noting multiple state licensure creates significant burdens on attorneys, including CLE requirements and payment of bar dues).

80. The Restatement (Third) of Law Governing Lawyers refers to the lawyer's state of licensure as the lawyer's "home state," in summarizing the breadth of advice an attorney may provide to in-state clients. RESTATEMENT (THIRD) OF LAW GOVERNING LAWYERS § 3 cmt. e (AM. LAW INST. 2000) ("[A] lawyer conducting activities in the lawyer's home state may advise a client about the law of another state, a proceeding in another state, or a transaction there, including conducting research in the law of the other state, advising the client about the application of that law, and drafting legal documents intended to have legal effect there."). In contrast, a resident lawyer *not* licensed in the state where he or she resides would run the risk of liability for unauthorized practice of law. Lawyers may only practice law in jurisdictions in which they have been admitted or licensed. Pamela A. McManus, *Have Law License; Will Travel*, 15 GEO. J. LEGAL ETHICS 527, 528–29 (2002).

created room for courts to reach different conclusions after weighing the relevant factors.[81] In particular, individual facts and particularized circumstances can lead to a difference in how the fairness factors are weighed: the degree of the attorney's contacts with the forum, the degree to which the attorney sought in-state business, and the nature of the legal representation all play into courts' analyses of the jurisdictional question.[82]

Courts will typically find jurisdiction in claims arising from cases in which out-of-state lawyers represent clients in the courts of the forum state.[83] In such a case, the lawyer will clearly have in-state contacts that give rise to the claim asserted, and because the attorney has already appeared in an in-state matter, the reasonableness factors are likely to weigh in favor of finding jurisdiction.[84] Some states may place additional limits on personal jurisdiction that go beyond the requirements of constitutional due process, but in the absence of such external limits or other unusual circumstances, courts will typically find jurisdiction over an attorney who has made an in-state appearance in the underlying matter.[85]

A more difficult question arises when the out-of-state attorney represents in-state clients in out-of-state matters.[86] Such attorneys typically have some in-state contacts—they may mail letters to in-state clients, they may visit the clients in the home forum, and they may have

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81. *See generally* Shields, *supra* note 8, at 151 (collecting cases and reporting varying outcomes).

82. *Id.*

83. For example, the Court in *Willis v. Semmes, Bowen & Semmes* noted:

> It is clear to the Court that subjecting this defendant to suit in Virginia on those causes of action which arose from defendant's activity as plaintiff's legal counsel in Virginia clearly falls within the perimeters of due process. Defendant certainly availed itself of the privilege of conducting activities within the forum state and directly invoked the benefits and protection of its laws.

Willis v. Semmes, Bowen & Semmes, 441 F. Supp. 1235, 1244 (E.D. Va. 1977); *see also* Alonso v. Line, 2002-2644, p. 10 (La. 5/20/03); 846 So. 2d 745, 752 (La. 2003) (noting the Alabama attorney had appeared in a Louisiana court hearing); Turner v. Tranakos, 744 P.2d 898, 899 (Mont. 1987) (upholding jurisdiction when an attorney made an in-state appearance as attorney of record).

84. *See, e.g.*, *Alonso*, 846 So. 2d at 752 ("[W]hile Line testified that it is somewhat difficult to travel in that he is a large man with knee problems and cannot travel by car to Louisiana, we find that this burden is not so difficult as to overcome presumption of reasonableness. After all, Line previously traveled to Baton Rouge by plane to appear in court.").

85. *See generally* Bryant v. Weintraub, Genshlea, Hardy, Erich & Brown, 42 F.3d 1398, No. 94-35313, 1994 WL 650140 (9th Cir. Oct. 11, 1994) (unpublished table decision) (noting the lawyer represented the plaintiff in related actions in California and Oregon but interpreting Oregon's long-arm statute to provide for jurisdiction only if the attorney's in-forum actions directly caused plaintiff's harm, and finding the California action caused the relevant harm in this case).

86. *See generally* Newsome v. Gallacher, 722 F.3d 1257 (10th Cir. 2013) (evaluating various aspects of jurisdiction to determine whether the lower court had specific jurisdiction over an out-of-state attorney).

engaged in varying levels of in-state advertising or other business-development activities.[87] In 2013, the Tenth Circuit struggled with this question in *Newsome v. Gallacher*,[88] a case that arose when a bankruptcy trustee filed a legal malpractice action in Oklahoma, alleging a Canadian law firm and its attorneys negligently represented the bankrupt Oklahoma-based corporation.[89] The court catalogued similar cases and noted a split among courts at both state and federal levels, with some willing to exercise jurisdiction based on the representation of in-state clients and others unwilling to do so.[90] Based on its assessment of five cases against[91] and three cases in favor,[92] the court concluded that the "majority view" was that "an out-of-state attorney working from out-of-state on an out-of-state matter does not purposefully avail himself of the client's home forum's laws and privileges, at least not without some evidence that the attorney reached out to the client's home forum to solicit the client's business."[93] Because the Canadian law firm worked only from Canada and only "on transactions consummated in Canada," the court held Oklahoma lacked personal jurisdiction over the firm.[94] The court acknowledged that the firm did have some Oklahoma contacts related to the representation—notably, it had facilitated the placement of liens on Oklahoma property—but concluded the Oklahoma contacts were not sufficiently related to the alleged malpractice to be able to support jurisdiction.[95]

Given the fact-bound nature of the specific jurisdiction determination and the relatively balanced number of supporting cases it cited on either side, the Tenth Circuit may have overstated whether there was a true "majority view" on personal jurisdiction over a non-resident attorney hired to assist with out-of-state needs. Nevertheless, even in the short time

87. *See id.* at 1280 (referencing "the normal communications that make up an active attorney–client relationship").

88. *Id.* at 1257.

89. *See id.* at 1262 (noting the debtor–corporation was owned by Canadians, incorporated in Delaware, and operated exclusively in Oklahoma).

90. *See id.* at 1280 ("Courts are split regarding whether out-of-state legal work on an out-of-state matter can subject an out-of-state lawyer to personal jurisdiction in the client's home forum.").

91. Sawtelle v. Farrell, 70 F.3d 1381, 1391–94 (1st Cir. 1995); Sher v. Johnson, 911 F.2d 1357, 1363 (9th Cir. 1990); Austad Co. v. Pennie & Edmonds, 823 F.2d 223, 226–27 (8th Cir. 1987); Exponential Biotherapies, Inc. v. Houthoff Buruma N.V., 638 F. Supp. 2d 1, 7–9 (D.D.C. 2009); We're Talkin' Mardi Gras, LLC v. Davis, 192 F. Supp. 2d 635, 636–41 (E.D. La. 2002).

92. Keefe v. Kirschenbaum & Kirschenbaum, PC, 40 P.3d 1267, 1272–73 (Colo. 2002); Brown v. Watson, 255 Cal. Rptr. 507, 512–13 (Ct. App. 1989); Cartlidge v. Hernandez, 9 S.W.3d 341, 344 (Tex. App.—Houston [14th Dist.] 1999, no pet.).

93. *Newsome*, 722 F.3d at 1280–81.

94. *Id.* at 1281.

95. *Id.*

since it was decided, the case has been influential: its statement of the "majority view" has been quoted in seven additional cases within a two-year period—though most were from federal district courts within the Tenth Circuit and therefore bound by its holding.[96] Even if the *Newsome* court's position was not clearly the majority view at the time it was decided, it appears to have become the majority view now.[97] Furthermore, because the case was decided as a matter of constitutional due process, lower courts have acknowledged that they are obligated to follow it—even when it conflicts with decisions from the relevant state's highest court.[98]

Even under *Newsome*'s restrictive view of jurisdiction, however, it is possible to distinguish cases based on each case's particular factual context. Most importantly, the court's qualification that the rule may not apply when "the attorney reached out to the client's home forum to solicit the client's business" has been seized as a compelling exception—though with some variation.[99] One court chose to analyze the question of who initiated the representation, concluding that the exception would not apply where the client had sought out the lawyer, rather than vice versa.[100] Another court applied the exception more broadly, deciding that the lawyer's efforts to maintain a normal attorney–client relationship sufficed to show the attorney had "reached out" to the client's home forum, regardless of who first sought to initiate the relationship.[101]

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96. Domain Vault LLC v. Bush, No. 14-CV-2621-WJM-CBS, 2015 WL 1598099, at *5 (D. Colo. Apr. 8, 2015); Hutton & Hutton, LLC v. Girardi & Keese, No. 13-1462-DDC-KGS, 2015 WL 1470515, at *7 (D. Kan. Mar. 31, 2015); Reynolds v. Henderson & Lyman, No. 13-CV-03283-LTB, 2014 WL 5262174, at *3 (D. Colo. Oct. 14, 2014); Chun Chee Seng v. Americana Invs., LLC, No. 13-CV-01745-REB-KMT, 2014 WL 4099322, at *6 (D. Colo. Aug. 20, 2014); CVR Energy, Inc. v. Wachtell, Lipton, Rosen & Katz, No. 13-2547-JAR-TJJ, 2014 WL 4059761, at *5 (D. Kan. Aug. 14, 2014); Jee v. Super. Ct., No. A140360, 2014 WL 1048198, at *3 (Cal. Ct. App. Mar. 19, 2014); Fulbright & Jaworski v. Eighth Jud. Dist. Ct., 342 P.3d 997, 1004 (Nev. 2015).

97. Outside the Tenth Circuit, some courts continue to allow jurisdiction under similar circumstances. *See* Beverage v. Pullman & Comley, LLC, 316 P.3d 590, 590 (Ariz. 2014) (affirming the court of appeals' analysis conferring Arizona jurisdiction over defendants); Ward v. Hawkins, 418 S.W.3d 815, 821 (Tex. App.—Dallas 2013, no pet.) (concluding the record established minimum contacts for the state of Kansas to confer personal jurisdiction).

98. *See Reynolds*, 2014 WL 5262174, at *4 ("I am bound by *Newsome*'s holding regarding the limits of federal due process, not the contradictory decisions of the Colorado Supreme Court.").

99. *Newsome*, 722 F.3d at 1280–81.

100. *See Reynolds*, 2014 WL 5262174, at *3 ("Here, as in *Newsome*, the defendant attorneys did not reach out to forum residents to solicit business; rather, the LLCs came to H & L.").

101. *See Hutton & Hutton*, 2015 WL 1470515, at *7 ("Here, the parties contemplated a "continuing relationship" as they jointly-represented Avandia clients through settlement or other resolution of their lawsuits, which lasted from late spring or early summer 2009 through the settlement of the cases in April 2012. By reaching into Kansas to create a continuing relationship

The *Newsome* court adopted its restrictive view of specific jurisdiction approximately six months before the Supreme Court limited the application of general jurisdiction in *Daimler*.[102] Although the cases deal with different facets of the personal jurisdiction analysis, their combination substantially increases the difficulty for legal malpractice plaintiffs suing national law firms. As noted above, in the past, there would have been no question that national law firms could be subject to general jurisdiction in any of the states where their attorneys regularly practiced.[103] Now, however, general jurisdiction has been narrowed—a plaintiff wishing to proceed against a law firm outside the firm's home state must rely on specific jurisdiction. But just as *Daimler* pushes more cases into the specific jurisdiction framework, *Newsome* suggests courts should be reluctant to exercise specific jurisdiction. This means large law firms, that a mere two years ago might not have even challenged jurisdiction, could now be effectively immune from suit in the client's home forum when the firms' representation related to out-of-state matters.

Such immunity from suit in the client's home jurisdiction played out in just this manner in a recent Nevada Supreme Court case. A Nevada plaintiff sued the then-Texas-based law firm of Fulbright & Jaworski[104] for breach of fiduciary duty arising from a failed Texas real estate deal.[105] When the plaintiff filed suit in Nevada in 2012, the Supreme Court had not yet decided *Daimler*. Under the then-prevailing "continuous and systematic" test, the trial court concluded it could exercise general jurisdiction over Fulbright & Jaworksi—the firm had litigated regularly in Nevada courts, and one partner even served as "a paid lobbyist for two Nevada legislative sessions."[106] After *Daimler* was decided, however,

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with plaintiff, G & K purposefully availed itself of the opportunity to conduct business in Kansas.").

102. *Newsome* was decided in July 2013. *Newsome*, 722 F.3d at 1257.

103. *See supra* Part III.A.

104. Fulbright & Jaworski has subsequently changed its firm name to Norton Rose Fulbright US LLP and has become part of a larger legal entity organized as a Swiss verein. NORTON ROSE FULBRIGHT, http://www.nortonrosefulbright.com/us (last visited Jan. 7, 2016). The increase in law firms choosing to operate within the verein structure gives rise to other potential personal jurisdiction issues, including the possibility of jurisdiction founded on the theory of imputed contacts or alter ego. *See* Douglas R. Richmond & Matthew K. Corbin, *Professional Responsibility and Liability Aspects of Vereins, the Swiss Army Knife of Global Law Firm Combinations*, 88 ST. JOHN'S L. REV. 917, 958 (2014) (explaining that personal jurisdiction may be found through a firm's alter ego). Thus far, the Supreme Court has not ruled on the limits of such jurisdictional bases. *See* Tanya J. Monestier, *Registration Statutes, General Jurisdiction, and the Fallacy of Consent*, 36 CARDOZO L. REV. 1343, 1356 (2015) (noting that in *Daimler*, "[t]he Court sidestepped the thorny issue of when a subsidiary's contacts are imputable to a parent").

105. Fulbright & Jaworski v. Eighth Judicial Dist. Court, 342 P.3d 997, 1000 (Nev. 2015).

106. Answer to Fulbright & Jaworski LLP and Jane Macon's Petition for Writ of Prohibition at

Fulbright sought interlocutory relief in the Nevada Supreme Court, arguing that general jurisdiction was improper under the at-home standard.[107] The Nevada Supreme Court agreed.[108]

Fulbright further relied on *Newsome* to argue that specific jurisdiction was also improper, since the representation had been limited to a Texas real estate development project.[109] The court again agreed, concluding the law firm "did not actively seek out" the client's business, but was instead approached by a client representative.[110] Although the firm did undertake some Nevada contacts during the course of the representation—including the provision of legal advice within the state of Nevada—the court concluded that these contacts were insufficiently related to the alleged misconduct to support jurisdiction.[111] Thus, the court concluded that neither specific nor general jurisdiction was appropriate.[112] If the plaintiffs wished to purse their lawsuit, they would have to do so in Texas.

Interestingly, the *Fulbright* case was almost the geographical mirror image of *Cartlidge v. Hernandez*,[113] one of the "minority view" cases referred to by the *Newsome* court and decided a decade earlier. In *Cartlidge*, a Texas client filed a legal malpractice claim against a Nevada attorney arising out of a lawsuit filed in Nevada.[114] The district judge[115] denied the defendant's special appearance.[116] On appeal, the appellate court agreed jurisdiction was proper.[117] It pointed to the repeated purposeful contacts the lawyers had maintained with their clients in Texas and noted that the Supreme Court had validated resting specific jurisdiction on the creation of "continuing relationships and obligations with citizens of

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1, *Fulbright*, 342 P.3d 997 (No. 65122), http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=33314.

107. *Fulbright*, 342 P.3d at 1001–02.

108. *Id.* at 1005–06.

109. *Id.* at 1003–04.

110. *Id.* at 1004.

111. *See id.* at 1004–05 ("Here, although the district court concluded that Macon provided 'legal advice' to Verano's investors at the two presentations, the record contains no indication of what that legal advice was, much less how Verano's causes of action against petitioners arose from that legal advice.").

112. *Id.* at 1005.

113. Cartlidge v. Hernandez, 9 S.W.3d 341 (Tex. App.—Houston [14th Dist.] 1999, no pet.).

114. *Id.* at 344.

115. The Honorable John P. Devine was elected to the Supreme Court of Texas in 2012.

116. *Cartlidge*, 9 S.W.3d at 345.

117. *See id.* at 350 ("[W]e hold there is factually sufficient evidence to support the trial court's ruling that the assertion of personal jurisdiction over Cartlidge for the alleged legal malpractice does not offend due process.").

another State" in *Burger King*.[118]

Because the Texas court found minimum contacts had been established, it looked to the fairness factors.[119] In doing so, the court considered an interest the *Newsome* and *Fulbright* courts had not examined: the state's interest in regulating the provision of legal services to its citizens.[120] The court emphasized that "[t]he importance of the legal profession in our system of government and, therefore, the importance of maintaining integrity within the profession, constitutes a legitimate state interest."[121] The facts of *Cartlidge* demonstrate how the client-protection interest can be undermined by a restrictive personal jurisdiction doctrine.[122] While it is true the *Cartlidge* attorneys focused their work only in Nevada, the geographical restriction itself was alleged to be part of the attorneys' negligence.[123] The Nevada court had dismissed the underlying lawsuit for lack of jurisdiction, and the plaintiffs alleged that their Nevada lawyers were negligent in allowing the claim to lapse by failing to either refile the claim in Texas or associate with an attorney who could do so.[124] Although *Cartlidge* was one of the "minority" opinions disfavored by the *Newsome* court, its analysis appears to better protect the state's interest in regulating the provision of legal services. A personal jurisdiction analysis that examines only where the attorneys perform their legal work—and thus ignores whether that geographical restriction was itself a reasonable limitation—leaves a gap between the state's regulatory power and its adjudicative authority.

IV. INTEGRATING REGULATORY POWER AND CLIENT INTERESTS

The challenge for courts going forward is to develop an approach to personal jurisdiction that fits within the framework of the Supreme Court's recent decisions but still succeeds in protecting state interests in lawyer regulation and client protection. Although this is a challenge, it is possible to do—though navigating such a course may require courts to jettison some of the lower court decisions that predate *Daimler* and *Walden*. Courts

118. *Id.* at 348 (citing Burger King v. Rudzewicz, 471 U.S. 462, 473 (1985)).

119. *Id.* at 349 ("Having determined that Cartlidge had sufficient minimum contacts with Texas, we must now decide whether the trial court's assertion of jurisdiction comports with 'traditional notions of fair play and substantial justice.'").

120. *Id.* at 350.

121. *Id.* at 350 n.10.

122. *Id.*

123. *See id.* at 345 (discussing plaintiffs' claim of negligence against attorneys for failing to "refile the case in Texas . . . or refer the case to anyone who could" do so).

124. *Id.*

need to revert to first principles to balance the non-resident defendant's liberty interest in avoiding litigation in an unrelated forum against the state's interest in ensuring the adequacy of the legal services provided to its citizens. Doctrinally, these interests can be protected consistently with *Daimler* and *Walden* by reexamining two parts of the jurisdictional calculus: the forum relatedness requirement and the foreseeable in-state effects of the lawyer–client relationship.

A. *Applying a Broader Relatedness Requirement that Integrates the State Interest in Client Protection*

Now that the Supreme Court has limited general jurisdiction to the defendant's home forum, more cases will focus on the requirements of specific jurisdiction. In cases where the defendant's in-forum contacts are truly continuous and systematic—as, for example, the situation where a law firm maintains a regional office—courts will sharpen their focus on the question of forum relatedness. The other prongs of specific jurisdiction, after all, would be easily met in such a case: the purposeful availment standard can easily be met by the ongoing work in the forum, and the defendant's burden in litigating in a state in which the defendant has such regular contacts is likely to be minimal. Thus, the analysis will turn on whether the plaintiff's alleged injuries "arise [from] or relate to" the defendant's in-forum contacts.[125]

Courts have long disagreed about what level of connection is needed to meet the "arise from or relate to" test.[126] Recent Supreme Court

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125. The *Burger King* Court explained:

> Where a forum seeks to assert specific jurisdiction over an out-of-state defendant who has not consented to suit there, this "fair warning" requirement is satisfied if the defendant has "purposefully directed" his activities at residents of the forum, and the litigation results from alleged injuries that "arise out of or relate to" those activities.

Burger King v. Rudzewicz, 471 U.S. 462, 472 (1985) (footnote omitted) (citation omitted) (first quoting Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 774 (1984); and then quoting Helicopteros Nacionales de Colom., SA v. Hall, 466 U.S. 408, 421 n.1 (1984)).

126. *See* Carol Andrews, *Another Look at General Personal Jurisdiction*, 47 WAKE FOREST L. REV. 999, 1026–47 (2012) (noting several competing standards and the ambiguity of using both "arise" and "relate to" when describing a lack of connection that prompts jurisdiction analysis); Charles W. "Rocky" Rhodes, *The Predictability Principle in Personal Jurisdiction Doctrine: A Case Study on the Effects of a "Generally" Too Broad, but "Specifically" Too Narrow Approach to Minimum Contacts*, 57 BAYLOR L. REV. 135, 204–05 (2005) (arguing lower courts do not comport with Supreme Court precedent due to their own interpretations of what "arise from" actually means); Rhodes & Robertson, *supra* note 11, at 230–31 (acknowledging a broader standard, although some courts have declined to disavow the traditional formulations). Suffolk University Law School Professor Linda Sandstrom Simard suggests:

precedent has declined to apply a narrow definition, saying only that there must be "an 'affiliatio[n] between the forum and the underlying controversy.'"[127] Lower courts have referred to the connectedness requirement as the "least developed prong" of specific jurisdiction.[128]

When general jurisdiction played a larger role, there was less of a need to develop a doctrinal analysis of the connectedness requirement, and when it did apply, courts could afford to apply it strictly.[129] After all, if the defendant had continuous and systematic contacts, there was no need to even consider forum connectedness.[130] If the defendant had only sporadic and attenuated contacts, it was reasonable to require a substantial connection between those contacts and the relevant cause of action.[131]

It was, therefore, no surprise that courts applied different tests, and such tests were relatively strict. Because the connectedness analysis came into play only when the defendant's forum contacts were irregular and limited, courts were reluctant to apply the connectedness requirement in a way that would expand jurisdiction.[132] Instead, scholars and courts sought to apply the connectedness requirement narrowly. One leading scholar suggested that courts should examine the "substantive relevance" of such contacts, asking whether the facts of those contacts were relevant to prove the elements of the plaintiff's cause of action.[133] Courts imported standards from tort law, applying a "but for" or "proximate cause" analysis that examined whether the cause of action would have existed without the defendant's in-forum contacts.[134]

> Since the Supreme Court adopted the minimum contacts doctrine over fifty years ago, the Court has never fully elaborated on the standard that should be applied to determine the scope of specific jurisdiction. Rather, the Court has loosely stated that a cause of action must "arise out of," "relate to," or be "connected with" the defendant's forum contacts.

Linda Sandstrom Simard, *Meeting Expectations: Two Profiles for Specific Jurisdiction*, 38 IND. L. REV. 343, 348 (2005) (quoting Int'l Shoe Co. v. Wash., 326 U.S. 310, 319 (1945)).

127. Goodyear Dunlop Tires Operations, SA v. Brown, 131 S. Ct. 2846, 2851 (2011) (alteration in original) (quoting Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1136 (1966)).

128. Ticketmaster-N.Y., Inc. v. Alioto, 26 F.3d 201, 206 (1st Cir. 1994).

129. Rhodes & Robertson, *supra* note 11, at 230–31.

130. *Id.* at 235.

131. *Id.* at 236–37.

132. *Id.*

133. Lea Brilmayer, *How Contacts Count: Due Process Limitations on State Court Jurisdiction*, 1980 SUP. CT. REV. 77, 82.

134. *Nowak v. Tak How Investments, Ltd.* illustrates this analysis:

> [T]he proximate cause standard better comports with the relatedness inquiry because it so easily correlates to foreseeability, a significant component of the jurisdictional inquiry. A 'but for' requirement, on the other hand, has in itself no limiting principle; it literally embraces every

In the last few years, however, courts have increasingly been willing to reevaluate the connectedness requirement, especially as the Supreme Court has tightened other aspects of the jurisdiction equation.[135] The Supreme Court of Oregon pointed out that strict adherence to either the "substantive relevance" approach or the "but for" approach reads the Supreme Court case law too narrowly; it "focuses exclusively on the 'arise out of' aspect of the Supreme Court's test requiring that an action either 'arise out of' or 'relate to' the defendant's contacts with the state."[136] The Illinois Supreme Court likewise concluded that strict but-for causation was unnecessary under Supreme Court case law; instead, it evaluated the nature of the defendant's in-state contacts, and concluded that even though the in-state contacts did not directly cause the plaintiff's injury, those contacts were similar enough in nature to qualify as "related" for jurisdictional purposes.[137] In place of a narrow causation test, both courts seemed to adopt the standard earlier advocated by Professor Mary Twitchell:

> For example, specific jurisdiction might be fair when a defendant's forum conduct is similar to, but not causally related to, the conduct that forms the basis for the cause of action. Although the defendant's forum-related conduct would not be substantively relevant to the claim in this situation, the functional factors underlying the related-cause-of-action requirement might still be met.[138]

Essentially, the analysis advocated by Twitchell, and adopted in Oregon and Illinois, interprets the phrase "related to" to reach a higher level of generality than "arising from." Instead of requiring factual causality, a dispute can be related to the defendant's forum contacts when those contacts encompass the same character or type of activity that caused injury to the forum resident. In this way, the more relaxed standard incorporates the forum's regulatory interest. After all, when the defendant engages in the same type of conduct both inside and outside of the forum, the state has an interest in protecting its citizens from the harm caused by that conduct. Of course, this is not to say that other forums might not

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event that hindsight can logically identify in the causative chain. . . . That being said, we are persuaded that strict adherence to a proximate cause standard in all circumstances is unnecessarily restrictive.

Nowak v. Tak How Inv., Ltd., 94 F.3d 708, 715 (1st Cir. 1996).

135. *See* Robinson v. Harley-Davidson Motor Co., 316 P.3d 287, 293–94 (Or. 2013) (explaining the various tests lower courts apply to fill gaps in jurisdictional analyses).

136. *Id.* at 296–97.

137. Russell v. SNFA, 2013 IL113909, ¶ 83.

138. Mary Twitchell, *The Myth of General Jurisdiction*, 101 HARV. L. REV. 610, 660 (1988).

have a greater interest—but that question is one that can be addressed either through the balancing test of the fairness factors or through the discretionary application of the forum non conveniens doctrine.[139]

If the courts in *Fulbright* and *Newsome* had applied a similar connectedness requirement, it is likely that both would have upheld the exercise of jurisdiction. In both cases, it was clear the defendant attorneys had some contact with the relevant forums—and in the case of *Fulbright*, rather substantial contact. But both cases applied a narrow connectedness requirement. In *Fulbright*, the court elided the "purposeful availment" standard with the connectedness standard, writing that "[p]urposeful availment requires that '[t]he cause of action . . . arise from the consequences in the forum state of the defendant's activities.'"[140] The court left out the "or relates to" prong altogether, finding "the record contains no indication of what that legal advice was, much less how Verano's causes of action against petitioners arose from that legal advice."[141] The *Newsome* court similarly stated that "the plaintiff's injuries must arise out of defendant's forum-related activities," while ignoring the alternative that such activities need only "relate to" forum activities.[142]

The broader conception of the relatedness requirement adopted by Oregon and Illinois should be applied in legal malpractice actions. First, that standard more clearly matches the text of the Supreme Court's opinions and gives meaning to the "relates to" prong of the Court's formulation. More importantly, however, the broader standard also more closely aligns jurisdictional expectations with the state's regulatory power. The American Bar Association's Model Rules of Professional Conduct, which have largely been enacted by the various states, declare that a lawyer is "subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction."[143] The comment to the rule explains that its intent is to protect the state's citizens—a rationale that applies even if the lawyer is representing the in-state client on legal matters arising outside of the client's home state.[144]

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139. *See* 4 MALLEN WITH RHODES, *supra* note 8, § 37:31 ("Even if the contacts are sufficient to confer jurisdiction, a court may decline to proceed, because of the quality of the contacts or the interest of another state.").

140. Fulbright & Jaworski v. Eighth Judicial Dist. Court, 342 P.3d 997, 1005 (Nev. 2015).

141. *Id.*

142. Newsome v. Gallacher, 722 F.3d 1257, 1281 (10th Cir. 2013) (citing Dudnikov v. Chalk & Vermilion Fine Arts, Inc., 514 F.3d 1063, 1071 (10th Cir. 2008)).

143. MODEL RULES OF PROF'L CONDUCT r. 8.5 (AM. BAR ASS'N 2013).

144. *See id.* r. 8.5 cmt. 1 ("Extension of the disciplinary authority of this jurisdiction to other lawyers who provide or offer to provide legal services in this jurisdiction is for the protection of the

The constitutional authority of courts to exercise personal jurisdiction over out-of-state attorneys should be at least as broad as courts' power to regulate the legal services provided to their citizens.[145]

B. *Considering the Foreseeable In-State Effects of the Lawyer–Client Relationship*

In addition to applying a broader connectedness test, courts should also examine the foreseeable in-state effects of the lawyer–client relationship. *Walden*'s restrictive application of effects-test jurisdiction should not be read to foreclose effects-based jurisdiction in legal malpractice cases when an attorney represented a client in the target forum.

The key jurisdictional difference between *Walden* and interstate legal malpractice cases is the role of the state regulatory interest in protecting in-state clients. Professor Allan Erbsen has convincingly argued "[s]tate regulatory interests are relevant under modern personal jurisdiction doctrine, as they should be."[146] He situates effects-test jurisdiction within the larger federal structure, suggesting that it helps to ensure the fair allocation of regulatory power between sovereign entities and facilitates the protection of local citizens.[147] Other scholars have also argued that the personal jurisdiction analysis should include attention to the state's legislative and regulatory power.[148]

Including the state regulatory interest in the analysis of effects-based jurisdiction suggests the following standard: when the lawyer's representation of a client will foreseeably cause in-state effects, those effects should count as relevant forum contacts that establish purposeful

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citizens of this jurisdiction.").

145. *See* Douglas R. Richmond, *Why Legal Ethics Rules Are Relevant to Lawyer Liability*, 38 ST. MARY'S L.J. 929, 961 (2007) ("[E]thics rules establish only minimum standards of conduct and the process by which they are enacted makes any standard derived from them reliable.").

146. Erbsen, *supra* note 67, at 440.

147. *Id.* at 389. ("Granting or denying jurisdiction can support or undermine regulatory interests by allocating power between states, imposes burdens on the parties that can impede access to justice, and alters risk assessments that shape both socially desirable and socially destructive behavior.").

148. *See* Jeffrey M. Schmitt, *Rethinking the State Sovereignty Interest in Personal Jurisdiction*, 66 CASE W. RES. L. REV. (forthcoming 2016) (manuscript at 3) (on file with the *St. Mary's Law Journal*) (concluding that "as a matter of state sovereignty, a state court may exercise jurisdiction only over a defendant that engaged in conduct that significantly implicated interests within the sphere of the state's sovereign power, i.e., the health, safety, and general welfare of its people"); *see also* Stewart E. Sterk, *Personal Jurisdiction and Choice of Law*, 98 IOWA L. REV. 1163, 1206 (2013) (explaining that when personal jurisdiction protects sovereignty interests, "the concern is that the result achieved in the forum will upset the ability of another jurisdiction to regulate local activity," and when it protects liberty interests, "the liberty interest is the ability to plan local activities in reliance on the regulatory scheme in effect in one's home state").

availment. In analyzing whether the attorney made a purposeful connection with the state—and not merely with an individual who happened to reside in that state—the court should consider whether the representation reasonably required the attorney to be aware of the legal landscape of the client's home forum.

In most cases, the analysis will tilt in favor of allowing jurisdiction. Unlike the deprivation of funds in *Walden*, which could have had an effect anywhere the plaintiff went (and therefore failed to establish a purposeful connection with the plaintiff's home forum),[149] legal practice is still inextricably tied to state oversight.[150] Even when an attorney agrees to represent a client in an out-of-state matter, competent representation may still require the attorney to protect the client's interest in his or her home forum—thus, for example, an attorney's unsuccessful attempt to file suit in Nevada on behalf of a Texas client, along with a failure to protect the client's interest by then letting the claim lapse instead of refiling the case in Texas, will foreseeably cause harm in the client's home state.[151] The client's home state of Texas is not a mere "fortuity" that the attorney may remain ignorant of, or ignore; a competent attorney must remain aware of state law that binds the client and thus has ramifications for legal matters that proceed elsewhere. Thus, for example, state law may impose a fiduciary duty in the client's business dealings, and state law may give rise to tax liability on an out-of-state transaction or may recognize a lien on the client's property. Accepting the representation of an out-of-state client requires, at a minimum, that the attorney keep a watchful eye out to spot state-law issues that may affect the representation.[152]

In other contexts, reliance on effects-based jurisdiction can be problematic because it effectively allows a state to regulate extraterritorial conduct. In tort cases arising from speech acts—such as libel, slander, or other related actions—such extraterritorial regulation can run afoul of

149. Walden v. Fiore, 134 S. Ct. 1115, 1125 (2014).

150. *See* Larry E. Ribstein, *Lawyers As Lawmakers: A Theory of Lawyer Licensing*, 69 MO. L. REV. 299, 305–06 (2004) ("The state's power to withdraw a professional license enforces conduct regulation by causing forfeiture of the professional's substantial investment in the training and other costs necessary to obtain the license.").

151. Cartlidge v. Hernandez, 9 S.W.3d 341, 344–45 (Tex. App.—Houston [14th Dist.] 1999, no pet.); *see supra* Part III.B (recommending relevant forum contacts should be established if an in-state contact causes a foreseeable in-state effect).

152. *See* MODEL RULES OF PROF'L CONDUCT r. 1.1 (AM. BAR ASS'N 2013) ("A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."); *id.* r. 1.1 cmts. 1–8 (AM. BAR ASS'N 2013) (explaining a lawyer may become competent through study or may associate with another attorney with the required expertise if the client so permits).

constitutional free speech guarantees.[153] This result can be especially problematic in the jurisdictional context, because the jurisdictional analysis is done before any resolution on the merits of the claim has happened.[154] While a state may have a valid interest in prohibiting out-of-state defamation that causes in-state harm to one of its citizens, it does not have a regulatory interest in regulating extraterritorial non-defamatory protected speech.[155] Any such attempt to do so would encroach on the rights of the citizens of other states.[156]

In the context of legal practice, however, courts have long experience in working out the boundaries of extraterritorial regulation. First, the state's power to regulate legal practice is much broader than its general power to regulate speech. In the speech context, regulatory power depends upon a finding that the words were defamatory or otherwise non-protected. The power to regulate the provision of legal advice is much broader, however, and it does not depend on a finding of wrongfulness. Additionally, when more than one state has a regulatory interest in the lawyer's provision of legal services, choice-of-law considerations determine which interests will be paramount.[157] There is no inherent problem, however, with allowing more than one state to exercise regulatory power when the legal practice affects more than one jurisdiction.[158]

V. CONCLUSION

Lawyers are increasingly engaging in multi-jurisdictional practice.[159] As a result, courts are facing more and more legal malpractice cases in which clients seek to sue nonresident attorneys in the plaintiff's home forum. Such cases have presented a challenge for judges, who have long been faced with a murky and evolving personal jurisdiction doctrine. Over the

153. Cassandra Burke Robertson, *The Inextricable Merits Problem in Personal Jurisdiction*, 45 U.C. DAVIS L. REV. 1301, 1348 (2012) ("By their nature, effects-test cases often involve potentially wrongful speech.").

154. *Id.* at 1330–32 (explaining the procedure for proving jurisdictional facts).

155. *Id.* at 1341 (noting the limits of the state's regulatory power).

156. Allan Erbsen, *Horizontal Federalism*, 93 MINN. L. REV. 493, 564 (2008) ("[A]ny assertion in the form 'State X lacks power to regulate activity Y' can be restated as 'actors engaging in activity Y have a right not [to] be regulated by state X.'").

157. *See* MODEL RULES r. 8.5(b) (providing a choice-of-law analysis that generally favors the forum where "the predominant effect of the conduct" occurred).

158. *See id.* r. 8.5(a) ("A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.").

159. *See* John Leubsdorf, *Legal Ethics Falls Apart*, 57 BUFF. L. REV. 959, 1047 (2009) ("Ultimately, the growth of multistate and multinational practice should tend to make professional standards more uniform.").

years, courts have applied the personal jurisdiction doctrine inconsistently, reaching varying results even in similar factual scenarios.[160] The challenge grew even greater after the Supreme Court decided two new cases that reshaped the foundation of the personal jurisdiction analysis.[161]

However, the Supreme Court's new jurisprudence also presents an opportunity for courts to adopt a more cohesive analysis of personal jurisdiction in legal malpractice cases. The Supreme Court has left room for courts to consider the state's interest in regulating legal practice and protecting state citizens as part of its personal jurisdiction analysis. To ensure that such interests are not neglected, courts should focus on two aspects of the specific jurisdiction analysis. First, they should permit a broader view of "connectedness" in specific jurisdiction cases, upholding jurisdiction when the defendant's forum conduct is similar to the conduct at issue in the suit—even if there is not a clear causal relationship.[162] Second, courts should consider the foreseeable in-state effects of the attorney's out-of-state conduct.[163] If competent representation would give rise to foreseeable in-state issues and consequences, the attorney has engaged in purposeful availment of forum benefits by accepting the engagement. Both of these recommendations are consistent with existing Supreme Court precedent, and both would promote a more consistent approach to personal jurisdiction while protecting client interests.

160. *See supra* Part II.

161. Daimler AG v. Bauman, 134 S. Ct. 746 (2014); Walden v. Fiore, 134 S. Ct. 1115 (2014).

162. *See supra* Part IV.A.

163. *See supra* Part IV.B.